THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 17953 of 2005

-

Dated:12.08.2005

Between:

Marika Appanna, S/o.late Pydayya,

Aged about 70 years, R/o.Srikrishanpuram,

Darapalem, Post & Village, Mudasarelova,

Chinnagadila (Mandal), Visakhapatnam District.

..... PETITIONER

AND

The District Collector, Maharanipet, Visakhapatnam

and two others.

.....RESPONDENTS

-

-

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO : 17953 of 2005

O R D E R:

This writ petition is filed seeking to issue a writ of Mandamus declaring the action of the respondents in destroying the gardens, fruit bearing trees in the process of dispossessing the villagers Manndeora tribals like petitioner of Sririshnapuram Colony, Devarapalem Hamlet, Mudasarelova, Darapalem, Post & Village, Chinnagadial (Mandal), Visakhapatnam District from the lands assigned to him in Sy.No.26 of the village, as unconstitutional and consequently direct the respondents not to dispossess the tribals from the lands assigned to them in Sy.No.26 or cut trees and fruit bearing trees, without following the due process of law.

It is represented by both the learned counsel that the issue involved in the writ

petition is squarely covered by a decision of a Division Bench of this Court in ***P. LAKSHMANA RAO VS. EXECUTIVE OFFICER, GRAM PANCHAYAT, CHALLAPALLE*** whereby the Division Bench while considering an identical question, laid down the following guidelines:

> *" When a property is required for public purpose viz., for widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands and jump into the premises and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary, by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities that barring a few cases, in most of the cases which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupant/s though looks misconceived but after hearing the arguments. Court found there was an attempt by the Government either to widen the roads or clear the encroachments. But, before doing that, the authorities have to follow certain Principles of natural Justice. Hence, the writ petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the requirements.*
>
> *If the authorities, viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupant/s calling upon him/them to show-cause as to why the proposed action shall not be taken. In receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal Revenue Officer or other authorities concerned shall determine the extent of*

encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self Government authority or to the occupant/s. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupant/s on the basis of the assessment to be made by the engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forth with. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupant/s is/are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this Order calling upon the claimant/occupant/s to show-cause as to why the action proposed shall not be taken by giving 60 days time to file the objections, if any. The person interested viz., the occupant/s shall submit him/their objections or explanation within the time stipulated together with any other documents he/they would like to rely upon in support of his/their case. On receipt of such explanation/objections and documents, if any, the Mandal Revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter. In case of any enquiry, the same should be conducted in a summary way and the occupant/s shall produce all the evidence which he/they wants/want to rely upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant of assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupant/s. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the Officer concerned and the occupant/s or the person/s interest on the date notified by the concerned officer. The occupant/s shall appear before the concerned authority on all the dates in order to

complete the enquiry at an early date. Till the conclusion of the enquiry by the Mandal Revenue Officer, status-quo obtaining as on today shall continue."

The writ petition is accordingly disposed of, at the admission stage, directing the respondents not to destroy the gardens or trees belonging to the petitioner without following the guidelines issued by the Division Bench in the decision referred to *supra*. No costs.

_____

(ELIPE DHARMA RAO, J)

Date:12-08-2005

Tsr.